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SERVICE DATE – FEBRUARY 1, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 256X)

NORFOLK SOUTHERN RAILWAY COMPANY–ABANDONMENT EXEMPTION–IN
CHESTER COUNTY, PA

Decided: January 31, 2005

Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 0.8-mile line of railroad between milepost 18.92 and milepost 19.72 at Downingtown, in Chester County, PA.¹ Notice of the exemption was served and published in the Federal Register on November 18, 2004 (69 FR 67625).²

By decision served on December 15, 2004 (December 2004 decision), the proceeding was reopened at the request of the Board’s Section of Environmental Analysis (SEA) and the exemption was made subject to the conditions that NSR shall: (1) prior to conducting any salvage activities, consult with the U.S. Fish and Wildlife Service, Hadley, Massachusetts Office, Region 5 (FWS), regarding potential impacts from salvage activities to threatened and endangered species, and report the outcome of these consultations to SEA; and (2) consult with the U.S. Army Corps of Engineers, Philadelphia District (Corps), to determine if a permit is required under section 404 of the Clean Water Act, 33 U.S.C. 1344, prior to conducting salvage operations on the line.³

¹ According to NSR, the subject line overlaps 0.28 miles of a line that was authorized for abandonment in Consolidated Rail Corporation–Abandonment Exemption–Chester County, PA, Docket No. AB-167 (Sub-No. 1136X) (ICC served Sept. 19, 1994), because NSR has not been able to verify that Consolidated Rail Corporation exercised the abandonment authority with respect to that segment.

² The exemption became effective on December 18, 2004.

³ In its environmental assessment served on November 23, 2004, SEA had recommended that NSR retain its interest in and take no steps to alter the historic integrity of the rail line or any sites and structures eligible or potentially eligible for listing in the National Register of Historic Places until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f. In the December 2004 decision, the Board indicated that, based on the comments received from the Pennsylvania Historical and Museum Commission, SEA no longer recommended that the section 106 condition be imposed.

On December 2, 2004, Rick Dietz, Systems Engineer for NSR, sent a letter to FWS explaining the details of the salvage operations associated with the proposed abandonment of the line. In a letter dated December 13, 2004, FWS informed Mr. Dietz that the proposed abandonment or salvage activities would not result in adverse impacts to any Federally listed threatened or endangered species located within or near the project. Based on this information, SEA recommends that the FWS consultation condition be removed.

On January 5, 2005, the Board received a letter from the Pennsylvania Department of Environmental Protection (PADEP) in response to the Board's December 2004 decision regarding the possible need for NSR to obtain permits from PADEP prior to beginning salvage operations on the line. In the letter, PADEP noted that permits would be required only if NSR intends to remove existing bridges along its right-of-way or if NSR does not intend to remove any tracks or ties. SEA states that, in a telephone conversation, Mr. Dietz indicated that there are no bridges located along the line and that NSR intends to remove the tracks and ties located along the line during salvage operations. Accordingly, SEA recommends that no further action is required to address PADEP's concerns.

Finally, on January 25, 2005, NSR submitted to SEA a copy of a letter from the Corps, in which the Corps states that the proposed abandonment will not require its approval. SEA, therefore, recommends that the Corps consultation condition also be removed.

Accordingly, the proceeding will be reopened and the previously imposed FWS and the Corps consultation conditions will be removed.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the FWS and the Corps consultation conditions imposed in the December 2004 decision are removed.

3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary